

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

DEXTER WATSON

PETITIONER

v.

CIVIL ACTION NO. 5:14-cv-108-DCB-MTP

RAYMOND BYRD

RESPONDENT

ORDER

This matter comes before the Court on Petitioner Dexter Watson ("Watson")'s Motion for Leave to Proceed on Appeal in Forma Pauperis (**docket entry 36**). Having carefully considered the Motion, applicable statutory and case law, and being otherwise fully informed in the premises, the Court finds that the petitioner's motion is not well-taken and should be denied.

To grant Watson's motion for leave proceed *in forma pauperis* ("IFP") on appeal, the Court must find: (1) he is a pauper, and (2) his appeal is not frivolous, i.e., his appeal is taken in good faith. See Carson v. Polley, 689 F.2d 562, 586 (5th Cir. 1982); Fed. R. App. P. 24(a). The Fifth Circuit has defined frivolous as "lack[ing] an arguable basis in law or fact." Taylor v. Johnson, 257 F.3d 470, 472 (5th Cir. 2001); see also Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983) (noting that the good faith inquiry "is limited to whether the appeal involves legal points arguable on their merits (and therefore not frivolous)"). The Court may deny a motion for leave to appeal IFP by certifying that the appeal is not taken in good faith, and the petitioner may challenge the

Court's decision by filing an IFP motion with the Fifth Circuit Court of Appeals. Baugh v. Taylor, 117 F.3d 197, 202 (5th Cir. 1997); 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(5).

On June 6, 2017, Magistrate Judge Michael T. Parker entered his Report and Recommendation in the case, wherein he recommends that the relief sought in Watson's petition for writ of habeas corpus be denied and the habeas petition dismissed. See Doc. 31. The Court granted the petitioner additional time to respond to Judge Parker's Report and Recommendation, and on July 21, 2017, Watson's objections to the Report were entered on the docket.¹ See Docs. 33, 34. On the same day his objections were filed, Watson also filed a Notice of Appeal (docket entry 35), along with the present motion (docket entry 36) and a Motion for Certificate of Appealability (docket entry 37). This matter has therefore been pending before this district court roughly seventeen days. Because no final order has yet been entered on Judge Parker's Report and Recommendation or the petitioner's objections thereto, Watson's appeal is premature and without merit. See Trufant v. Autocon, Inc., 729 F.2d 308, 309 (5th Cir. 1984) ("the findings of a magistrate may not ordinarily be appealed directly to the Court of Appeals"); U.S. v. Cooper, 135 F.3d 960, 963 (5th Cir. 1998). Finding that the present appeal is not taken in good faith, the

¹ The date reflected on the petitioner's objections is July 18, 2017.

Court shall deny Watson's motion for leave to proceed IFP on appeal.

Accordingly,

IT IS HEREBY ORDERED that Petitioner's Motion for Leave to Proceed on Appeal in Forma Pauperis (docket entry 36) is DENIED.

SO ORDERED, this the 7th day of August, 2017.

/s/ David Bramlette
UNITED STATES DISTRICT COURT